

**Discussion of Consensus Recommendations for Ordinance and Policy Changes in the Proposed Stormwater Ordinance
September 24, 2009**

Issue	Current Ordinance	Proposed Ordinance
Addition of a companion index	No companion index was prepared.	There was initial discussion concerning breaking the Stormwater Ordinance into a number of separate ordinances. As the merits of that approach were examined it was decided by committee, recommended by the staff and facilitator that the ordinance stay in once comprehensive section. This admittedly makes the ordinance long and it is complicated. It was believed that building an annotated companion index would help property owners and developers better understand the ordinance.
Numerous technical clarifications		Staff, the facilitator and the committee believe that the wording in the current ordinance is imprecise and unnecessarily confusing in a number of places. The initial drafts of the proposed ordinance through this past October had similar issues. The staff, including the City's legal staff, made numerous stylistic and grammatical changes to add clarity and precision. The Watershed Policy Committee met before the March 2009 presentation to P&Z to discuss most of the changes. No objections were raised as to the change in wording resulting in a more user friendly proposed ordinance.
Stormwater Administrator's Duties	The Enabling Legislation for both Soil Erosion and Stormwater places substantial powers and duties in the administrator of the ordinance, i.e. the Stormwater Administrator. The current ordinance sets forth the powers and duties of the Stormwater Administrator in broad poorly	This issue was addressed early in the WPC's deliberations. The proposed ordinance which will be covered in some detail in our presentation to P&Z, more clearly defines those duties and to the extent possible, under one subsection.

	defined language.	
Recommendation – Civil Penalty Mitigation Fund	The current ordinance does not address a Penalty-based Mitigation Fund.	The goal of the proposed ordinance is to maintain and improve water quality. The WPC recommends that a mitigation fund be established and funded by penalties assessed to violators of the stormwater ordinance. The fund would be used to fund activities that promote clean water including: grants to property owners for establishing or reforesting aquatic buffers, publication of information that promotes better practices in clearing, grading, lawn and garden maintenance, stream monitoring, organization of stream cleanups and similar activities.
Consolidation of construction and post-construction phase buffers	The current ordinance prohibits any land disturbing activity within 30 feet of any intermittent or perennial stream. The current ordinance does not provide a Table of Uses that provides for Exemptions, Allowable Uses with Mitigation, and Disallowed Uses of the Buffer. That omission makes the requirement somewhat inflexible and opens the buffer area to inappropriate use post construction.	The proposed ordinance has consolidated buffer requirements for the construction and post-construction phases, has a Table of Uses based on the State’s model adopted in other river basins, and recognizes both slope of the land and disturbed area and cumulative impervious areas as reasonable factors that should control buffer width requirements.
Allowance for modification of post-construction design standards when aquatic buffer requirements are exceeded.	The current ordinance has no provisions (incentives) for establishing a buffer wider than the required 30 feet.	The proposed ordinance has water quality-based design standards for post-construction stormwater management. Under the proposed ordinance a developer could propose a buffer that is wider than the required buffer and petition the Stormwater Administrator to relax other water quality-based design standards. The petitioner would have to demonstrate through engineering design and calculations that the additional buffer achieves equal or greater water quality treatment.

Providing for a waiver on limitation of 5 acres disturbance on lands exceeding 15% slope when higher ESC standards are used	The current ordinance prohibits a project from having more than 5 disturbed acres at any given time on lands exceeding 15% slope	The proposed ordinance would allow the Stormwater Administrator to grant a waiver to that limitation when it is shown to be beneficial from a water quality prospective and higher ESC design and inspection standards are used.
Increase in disturbed area before a financial security instrument is required	The current ordinance requires that a property owner provide the City with a financial security instrument (bond, letter of credit) wherever a project disturbs more than one acre.	The proposed ordinance raises the requirement to 5 acres. City staff believes that the one acre provision creates too much paper work and administrative burden for the value gained. If the City has to step in and stabilize a disturbed area, it has alternative means for collecting the cost of those actions
Addressed location of BMPs in the public right-of-way	The current ordinance requires all BMPs to be located outside of public right-of-ways unless public benefit can be proven and location of the facility is approved by the Stormwater Administrator and Public Works Director	. The proposed ordinance relaxes the public benefit requirement but requires approval by City Council for the location of a BMP in the public right-of-way. This change could be important to facilitating multi-parcel and public-private cooperation in BMPs that serve more than one parcel
Improved Inspection requirements		The proposed ordinance clarifies and modifies inspection requirements. This topic will be discussed in detail during the presentation.
Clarification of the Stormwater Management Design Manual	The current ordinance references a City Stormwater Management Design Manual that does not exist.	The proposed ordinance recognizes the State Design Manual and the State Low-Impact Design Manual as the current design guidance but will allow the City to develop its own unique requirements and manual
Modifications and clarification of ESC penalties		Staff experience related to ESC penalties under the current ordinance led to proposed clarifications and adjustments to the penalty table. The WPC believes the proposed table to be fairer, better targeted towards major, willful and/or repetitive offenders, and less administratively burdensome.
Improvement and simplification of Appeal Process	The current ordinance has two distinctly separate appeal processes	Under the Proposed Ordinance, the appeals process has been consolidated to the extent possible, and simplified.

	for the erosion and sediment control and for stormwater, which creates confusion and uncertainty.	The initial appeal, to the Stormwater Administrator, is informal. The SA may, consistent with the application of specific guidelines, waive or reduce a penalty. It is anticipated that this informal process will reduce the number of appeals triggering a more formal review process.
Elimination of the requirement of providing the City with a notice of transfer when property with buffers and BMPs changes ownership	The current ordinance requires notification to the City whenever a property with buffers or BMPs changes ownership	The proposed ordinance eliminates that requirement. The WPC and staff agree that this is an unnecessary burden to add to property transactions and the City staff have readily available means of determining such transfers when needed.
Clarifications of the use of buffer space (Table of Uses)	The current ordinance does not address use of the land within an aquatic buffer.	The proposed ordinance includes a Table of Uses that is built upon the State's model enforced in other river basins.